

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PENSION FUND OF CEMENT MASONS')	
UNION LOCAL UNION NO. 502; CEMENT)	
MASONS' INSTITUTE LOCAL 502 WELFARE)	CASE NO.: 20-cv-2654
TRUST FUND; CEMENT MASONS' LOCAL 502)	
AND PLASTERERS AREA 5 ANNUITY FUND;)	JUDGE:
CEMENT MASONS' LOCAL NO. 502 RETIREE)	
WELFARE FUND; CEMENT MASONS' ROCK)	MAG. JUDGE:
ASPHALT AND COMPOSITION FLOOR)	
FINISHERS LOCAL UNION NO. 502 A.F.L-)	
C.I.O. SAVINGS FUND; CEMENT MASONS')	
UNION LOCAL 502 APPRENTICE)	
EDUCATIONAL AND TRAINING TRUST;)	
CEMENT MASONS' LOCAL UNIONS 502, 803)	
AND 11 AREAS 161, 362 AND 638 LABOR)	
MANAGEMENT COOPERATION TRUST FUND;)	
and CEMENT MASONS' UNION LOCAL NO.)	
502 PLASTERERS AREA 5,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
AREATHA CONSTRUCTION CO., INC., an)	
Illinois Corporation,)	
)	
Defendant.)	

COMPLAINT

NOW COME the Plaintiffs, the PENSION FUND OF CEMENT MASONS' UNION LOCAL UNION NO. 502, the CEMENT MASONS' INSTITUTE LOCAL 502 WELFARE TRUST FUND, the CEMENT MASONS' LOCAL 502 AND PLASTERERS AREA 5 ANNUITY FUND, the CEMENT MASONS' ROCK ASPHALT AND COMPOSITION FLOOR FINISHERS LOCAL UNION NO. 502 A.F.L.-C.I.O. SAVINGS FUND, the CEMENT MASONS' UNION LOCAL 502 APPRENTICE EDUCATIONAL AND TRAINING TRUST, the CEMENT MASONS' LOCAL NO. 502 RETIREE WELFARE FUND, the CEMENT

MASONS' LOCAL UNIONS 502, 803 AND 11 AREAS 161, 362 AND 638 LABOR MANAGEMENT COOPERATION TRUST FUND and the CEMENT MASONS' UNION LOCAL NO. 502 PLASTERERS AREA 5, complaining of the Defendant AREATHA CONSTRUCTION CO., INC., and in support, allege as follows:

JURISDICTION AND VENUE

1. This action arises under Sections 502 and 515 of the Employee Retirement Income Security Act ("ERISA") (29 U.S.C. §§ 1104, 1132 and 1145) and Section 301 of the Labor-Management Relations Act ("LMRA") (29 U.S.C. § 185). The Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. §§ 185, 1132 and 1145, and 28 U.S.C. § 1331.
2. Venue is proper in this Court pursuant to 29 U.S.C. §§ 1132(e)(2) in that the PENSION FUND OF CEMENT MASONS' UNION LOCAL UNION NO. 502, the CEMENT MASONS' INSTITUTE LOCAL 502 WELFARE TRUST FUND, the CEMENT MASONS' LOCAL 502 AND PLASTERERS AREA 5 ANNUITY FUND, the CEMENT MASONS' ROCK ASPHALT AND COMPOSITION FLOOR FINISHERS LOCAL UNION NO. 502 A.F.L.-C.I.O. SAVINGS FUND, the CEMENT MASONS' UNION LOCAL 502 APPRENTICE EDUCATIONAL AND TRAINING TRUST, and the CEMENT MASONS' LOCAL NO. 502 RETIREE WELFARE FUND (collectively the "TRUST FUNDS") are administered at 739 25th Ave., Bellwood, Illinois 60104 and pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of Illinois, Eastern Division.

PARTIES

3. The TRUST FUNDS receive contributions from numerous employers pursuant to the Collective Bargaining Agreement (“CBA”) entered into between the CEMENT MASONS’ UNION LOCAL NO. 502 PLASTERERS AREA 5 (“UNION”) and the Concrete Contractors Association of Greater Chicago/Mid-America Regional Bargaining Association, and therefore are multiemployer plans under 29 U.S.C. § 1002(37).
4. The CEMENT MASONS’ LOCAL UNIONS 502, 803 AND 11 AREAS 161, 362 AND 638 LABOR MANAGEMENT COOPERATION TRUST FUND (“LMCC”) is a labor management cooperation committee that is administered in Bellwood, Illinois.
5. Pursuant to Sections 502(a)(3) and 515 of ERISA (29 U.S.C. §§ 1132 and 1145), the TRUST FUNDS and the LMCC are authorized to bring this action on behalf of their participants and beneficiaries for the purpose of collecting unpaid contributions.
6. The UNION is the bargaining representative of the Defendant AREATHA CONSTRUCTION CO., INC. (“AREATHA CONSTRUCTION”)’s bargaining-unit employees.
7. The Defendant AREATHA CONSTRUCTION is an Illinois corporation with its principal place of business in Streamwood, Illinois.

COUNT I - BREACH OF CONTRACT – AREATHA CONSTRUCTION CO., INC.

8. Plaintiffs re-allege and incorporate the allegations contained in Paragraphs 1-7 of this Complaint with the same force and effect as if fully set forth herein.
9. AREATHA CONSTRUCTION is an employer engaged in an industry affecting commerce, which agreed to be bound by the terms of the CBA through a Memorandum of

Agreement. (A copy of the Memorandum of Agreement is attached as **Exhibit 1**); (A copy of the CBA is attached as **Exhibit 2**).

10. Through the CBA and Memorandum of Agreement, AREATHA CONSTRUCTION agreed to be bound by the provisions of the Agreements and Declarations of Trust which created the TRUST FUNDS (hereinafter referred to as the “Trust Agreements”).
11. Pursuant to the provisions of the CBA, Memorandum of Agreement, and Trust Agreements, AREATHA CONSTRUCTION is required to make monthly reports of the number of hours worked by its bargaining-unit employees and pay contributions to the TRUST FUNDS and LMCC for each hour that a bargaining-unit employee performs any work at the negotiated rate set forth in the CBA. The monthly reports and contributions during all relevant times were due on or before the 15th day of the calendar month following the calendar month during which the work was performed. (**Exhibit 2**).
12. Pursuant to the CBA, AREATHA CONSTRUCTION is required to deduct five dollars (\$5.00) from its bargaining-unit employees’ wages for each hour worked and remit it to the CEMENT MASONS’ ROCK ASPHALT AND COMPOSITION FLOOR FINISHERS LOCAL UNION NO. 502 A.F.L.-C.I.O. SAVINGS FUND. (**Exhibit 2**).
13. Pursuant to the CBA and properly executed check-off cards, AREATHA CONSTRUCTION is required to deduct \$3.50 from its bargaining-unit employees’ wages for each hour worked and remit it to the UNION. (**Exhibit 2**).
14. Pursuant to Section 502(g)(2) of ERISA (29 U.S.C. § 1132) and the provisions of the CBA and Trust Agreements, employers who fail to submit their monthly reports and contributions to the TRUST FUNDS and the LMCC, and dues to the UNION, on a timely basis are responsible for the payment of liquidated damages equal to fifteen percent (15%)

of the amount unpaid, plus interest at a rate of ten percent (10%) per annum, and any reasonable attorneys' fees and costs of maintaining suit, as well as any auditor fees incurred.

15. Pursuant to the CBA and Trust Agreements, a payroll compliance audit was conducted on the books and records of AREATHA CONSTRUCTION for the period of January 1, 2017 through December 31, 2019.
16. The payroll compliance audit revealed that AREATHA CONSTRUCTION owes the Plaintiffs the aggregate amount of \$6,158.53, itemized as follows:

Type:	Amount:
Contributions and Dues	\$4,442.20
Liquidated Damages	\$666.33
Audit Costs	\$1,050.00
Total Amount Due:	
	\$6,158.53

17. AREATHA CONSTRUCTION has a continuing obligation to remit monthly contribution reports, contributions and dues on a monthly basis to Plaintiffs, and to comply with the terms of the CBA, Memorandum of Agreement, and Trust Agreements.
18. Plaintiffs have been required to employ the undersigned counsel to collect the monies that are due and owing from AREATHA CONSTRUCTION.
19. Plaintiffs have complied with all conditions precedent in bringing this suit.
20. AREATHA CONSTRUCTION is obligated to pay the reasonable attorneys' fees and court costs incurred by the Plaintiffs pursuant to the CBA, Memorandum of Agreement, Trust Agreements, and 29 U.S.C. § 1132(g)(2)(D).

WHEREFORE, Plaintiffs respectfully request:

- A. That Judgment be entered in favor of Plaintiffs and against Defendant AREATHA CONSTRUCTION in the amount of \$4,442.20 for contributions and dues owed for the period of January 1, 2017 through December 31, 2019 as revealed by the payroll compliance audit;
- B. That Judgment be entered in favor of Plaintiffs and against Defendant AREATHA CONSTRUCTION in the amount of \$666.33 for liquidated damages resulting from its late payment of contributions and dues for the period of January 1, 2017 through December 31, 2019 as revealed by the payroll compliance audit;
- C. That Judgment be entered in favor of Plaintiffs and against Defendant AREATHA CONSTRUCTION in the amount of \$1,050.00 for the audit costs pursuant to the CBA, Memorandum of Agreement and Trust Agreements;
- D. That Judgment be entered in favor of Plaintiffs and against Defendant AREATHA CONSTRUCTION for any and all other contributions, dues, liquidated damages, and interest found to be due and owing in addition to those referenced in Paragraphs A and B above;
- E. That Defendant AREATHA CONSTRUCTION be ordered to pay the reasonable attorneys' fees and costs incurred by the Plaintiffs pursuant to the CBA, Memorandum of Agreement, Trust Agreements, and 29 U.S.C. § 1132(g)(2)(D); and
- F. That Plaintiffs have such other and further relief as the Court may deem just and equitable all at the Defendant AREATHA CONSTRUCTION cost pursuant to 29 U.S.C. § 1132(g)(2)(E).

Respectfully Submitted,

**PENSION FUND OF CEMENT
MASONS' UNION LOCAL UNION NO.
502 *et al.***

/s/ Lucas J. Habib - 6329755

One of Plaintiffs' Attorneys

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